

REMARKS

Applicants respectfully request that the Examiner enter the claim amendments because they remove issues from appeal—the amendments at least remove the 35 U.S.C. § 102(e) rejection of claims 1-2, 5-8, and 11-12 in the June 1, 2005 final Office Action from appeal.

Applicants cancel claims 3 and 9. Claims 1-2, 4-8, and 10-12 remain pending in the application. Applicants amend claims 1 and 7 to incorporate the respective features recited in canceled claims 3 and 9. No new matter has been added.

Claims 1-2, 5-8, and 11-12 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,614,808 to Gopalakrishna. Applicants amended base claims 1 and 7 to incorporate the respective features recited in canceled claims 3 and 9. Therefore, amended claims 1 and 7, together with claims 2, 5-6, 8, and 11-12 dependent therefrom, respectively, are patentable over Gopalakrishna.

Claims 3-4 and 9-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gopalakrishna in view of U.S. Patent No. 5,959,974 to Badt et al. Claims 3 and 9 have been canceled and their features have been incorporated to claims 1 and 7, respectively. Applicants respectfully traverse the Examiner's § 103 claim rejection.

The Examiner acknowledged that Gopalakrishna fails to disclose “a routing processing unit for selecting a path having the largest maximum transmission unit as a path for said combined packet from among a plurality of transmission paths to the same destination by excluding the path along the shortest route.” Page 3, line 23 to page 4, line 2 of the Office Action. The Examiner, thus, relied upon Badt et al. as a combining reference for disclosing this feature. The cited portion, the abstract, of Badt et al. merely describes, however, using an Internet Control Message Protocol (“ICMP”) echo request packet to adjust a Path Maximum

Transmission Unit ("PMTU") setting of a local system to match that of the path to a target system. In other words, Badt et al., as relied upon by the Examiner, only describe adjusting a PMTU setting of a system to match the PMTU to another system. Therefore, even assuming, arguendo, that it would be obvious to one skilled in the art to combine Gopalakrishna and Badt et al. in the manner proposed by the Examiner, the combination would still fail to teach or suggest,

"selecting a path having the largest maximum transmission unit as a path for said combined packet from among a plurality of transmission paths to the same destination," as recited in amended claims 1 and 7. (Emphasis added)

Accordingly, applicants respectfully submit that amended claims 1 and 7, together with claims 2, 4-6, 8, and 10-12 dependent therefrom, respectively, are patentable over Gopalakrishna and Badt et al., individually and in combination, for at least the above-stated reasons.

Claims 1-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,721,334 to Ketcham in view of U.S. Patent No. 6,212,190 to Mulligan. Again, applicants canceled claims 3 and 9 and incorporated the features recited therein to claims 1 and 7, respectively. Applicants respectfully traverse the Examiner's rejection.

The Examiner acknowledged that Ketcham "fails to disclose a method and system for selecting a path from a plurality of path between the source and destination with a largest maximum transport size unit by determining a maximum transport unit size of each path." Page 5, lines 4-7 of the Office Action. The Examiner, thus, relied upon Mulligan as a combining reference for disclosing this feature. The cited portions, col. 3, line 45 to col. 4, line 37 and col. 8, line 34 to col. 9, line 48, of Mulligan merely describe, however, comparing the size of packets to be transmitted over a network to a MTU size determined by "Path MTU Discovery," and adjusting the size of these packets to ensure they can be transmitted without fragmentation. Although Mulligan describes a network where packets can be transmitted via different routes, it

only describes adjusting the size of packets to be transmitted to lower the chance that such packets would be fragmented while being transmitted via such different routes. In other words, Mulligan, as relied upon by the Examiner, does not describe selecting one of the different routes. Therefore, even assuming, arguendo, that it would be obvious to one skilled in the art to combine Ketcham and Mulligan in the manner proposed by the Examiner, the combination would still fail to teach or suggest,

“selecting a path having the largest maximum transmission unit as a path for said combined packet from among a plurality of transmission paths to the same destination,” as recited in amended claims 1 and 7. (Emphasis added)

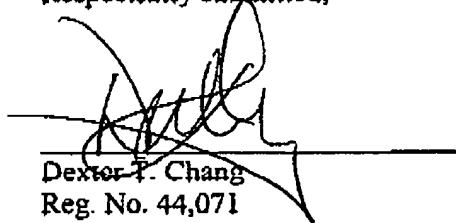
Accordingly, applicants respectfully submit that amended claims 1 and 7, together with claims 2, 4-6, 8, and 10-12 dependent therefrom, respectively, are patentable over Ketcham and Mulligan, individually and in combination, for at least the above-stated reasons.

The above statements on the disclosures in the cited references represent the present opinions of the undersigned attorney. The Examiner is respectfully requested to specifically indicate those portions of the respective reference that provide the basis for a view contrary to any of the above-stated opinions.

In view of the remarks set forth above, this application is in condition for allowance which action is respectfully requested. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,



Dexter T. Chang
Reg. No. 44,071

CUSTOMER NUMBER 026304
Telephone: (212) 940-6384
Fax: (212) 940-8986 or 8987
Docket No.: 100794-11662 (FUJA 18.463)
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